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 Before the  
 Federal Communications Commission  
 Washington, D.C. 20554

JUN 15 4 20 PM '93

MM Docket No. 93-152

In re Application of

Moenkopi Communications, Inc.

For Renewal of License of  
 Station KCNY(AM),  
 Moab, Utah

BR-900703YA

### HEARING DESIGNATION ORDER

Adopted: May 25, 1993;

Released: June 10, 1993

By the Commission:

1. The Commission has before it: (a) the captioned application for renewal of license filed by Moenkopi Communications, Inc. ("Moenkopi"), licensee of KCNY(AM), Moab, Utah; and, (b) the results of an investigation into KCNY(AM)'s silent status.

2. The Commission's records indicate that KCNY(AM) has been silent since December 11, 1989. The station's authority to remain silent expired on June 13, 1990. The current renewal of license application for KCNY(AM) has not been acted upon because of the station's silent status.<sup>1</sup> On April 15, 1988, the Commission approved the station's application for a construction permit to change its tower location (File No. BP-880111AJ). Authority to remain silent during the construction period was approved for the duration of that permit. The permit expired on October 15, 1989 and was cancelled on February 19, 1991, due to the licensee's failure to timely file either an application for an extension of the permit, or a license to cover the permit. No request to reinstate the permit has been filed by Moenkopi.

<sup>1</sup> It is the Commission's general policy to defer action on a station's renewal of license application while that station is silent.

<sup>2</sup> Section 73.1740(a)(4) provides:

"In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the licensee will so notify

3. By letters, dated October 26, 1990, June 24, 1991, November 15, 1991, February 28, 1992, May 22, 1992, and July 8, 1992, the Chief, AM Branch, Audio Services Division, Mass Media Bureau, requested that Moenkopi submit information concerning its compliance with Section 73.1740 (Minimum Operating Schedule) and Section 73.1750 (Discontinuance of Operation) of the Commission's Rules.<sup>2</sup> A number of these letters were returned as undeliverable and no response to any of these inquiries was ever received. By subsequent letter, dated January 29, 1993, after the staff was able to locate a principal of Moenkopi, the Chief, AM Branch, informed Moenkopi that its failure to respond to such inquiries would subject the KCNY(AM) renewal of license application to dismissal for failure to prosecute, pursuant to Section 73.3568(b) of the Commission's Rules. In its response, dated February 10, 1993, Moenkopi stated that it would attempt to return to the air if it had "assurance from the FCC [that it would have the] time to assemble the money and the equipment to resume broadcasting." No further explanation was given as to the reasons the station has been off the air for this protracted period or the steps Moenkopi intends to take to resume broadcast operations. Consequently, KCNY(AM) is currently off the air without authority. This fact, coupled with the fact that the licensee has kept KCNY(AM) off the air for over three years, supports our determination that Moenkopi is in apparent violation of Sections 73.1740(a)(4) and 73.1750 of the Commission's Rules. We believe that the evidence before us is sufficient to raise a substantial and material question of fact regarding Moenkopi's capability and intent to resume the broadcast operations of KCNY(AM). We will therefore designate the KCNY(AM) renewal of license application for an evidentiary hearing on appropriate issues specified below.

4. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. Sec. 309(e), the renewal of license applications of Station KCNY(AM), Moab, Utah, IS DESIGNATED FOR HEARING at a time and place to be specified in a subsequent Order, upon the following issues:

(a) To determine whether Moenkopi Communications, Inc. has the capability and intent to expeditiously resume broadcast operations of KCNY(AM) consistent with the Commission's Rules.

the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary."

Section 73.1750 provides:

"The licensee of each station shall notify the FCC in Washington, D.C. of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, D.C. for cancellation."

(b) To determine whether Moenkopi Communications, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules;

(c) To determine, in light of the evidence adduced pursuant to the preceding issues, whether or not grant of the subject renewal of license application would serve the public interest, convenience and necessity.

5. IT IS FURTHER ORDERED, That, in the event it is determined that grant of the renewal of license application would serve the public interest, convenience and necessity, the grant will be conditioned on the expeditious resumption of operation, the precise period of time to be established in the hearing. Failure to resume operations within the time specified in the condition will result in the cancellation of the license and the deletion of the station's call letters.

6. IT IS FURTHER ORDERED, That, in accordance with Section 309(e) of the Communications Act of 1934, as amended, both the BURDEN OF PROCEEDING with the introduction of evidence and the BURDEN OF PROOF with respect to the issues specified above shall be upon the LICENSEE, Moenkopi Communications, Inc.

7. IT IS FURTHER ORDERED, That to avail itself of the opportunity to be heard, the licensee, pursuant to Section 1.221(c) of the Commission's Rules, SHALL FILE with the Commission, in person or by attorney, within twenty (20) days of the mailing of this Order, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

8. IT IS FURTHER ORDERED, That the licensee herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rules, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

9. IT IS FURTHER ORDERED, That, if it is determined that the hearing record does not warrant an Order denying the renewal of license application of KCNY(AM), Moab, Utah, it shall be determined, pursuant to Section 503(b) of the Communications Act of 1934, as amended, whether an ORDER OF FORFEITURE shall be issued against the licensee in an amount not exceeding \$250,000.00 for the willful and/or repeated violation of Section 73.1740 and/or 73.1750 of the Commission's Rules.

10. IT IS FURTHER ORDERED, That, in connection with the possible forfeiture liability noted above, this document constitutes notice pursuant to Section 503(b)(3) of the Communications Act of 1934, as amended. The Commission has determined that, in every case designated for hearing involving revocation or denial of assignment, transfer, or renewal of license for alleged violations which also come within the purview of Section 503(b) of the Communications Act of 1934, as amended, it shall, as a matter of course, include this forfeiture notice so as to maintain the fullest possible flexibility of action. Accordingly, we stress that the inclusion of this notice is not to be taken as in any way indicating what the initial or final disposition of this case should be.

11. IT IS FURTHER ORDERED, That, henceforth, the Chief, Mass Media Bureau, shall have the DÉLEGATED AUTHORITY to designate for hearing the renewal of license applications of silent broadcast stations.

12. IT IS FURTHER ORDERED, That the Secretary send by Certified Mail-Return Receipt Requested, a copy of this Order to the licensee at the following address:

Michael A. Youngren, President  
Moenkopi Communications, Inc.  
380 Kensington Avenue  
Salt Lake City, Utah 84115

FEDERAL COMMUNICATIONS COMMISSION

*Donna R. Searcy 6/14/93*  
Donna R. Searcy  
Secretary